

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

AT&T MOBILITY SERVICES, LLC

and

Case No. 25-CA-249079

**COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 4202, A/W COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

Tiffany J. Limbach, Esq.,
for the General Counsel.
Meredith Shoop and Jeffrey A. Seidle, Esqs.
for the Respondent.

DECISION

INTRODUCTION¹

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on June 24, 2020, via the video-conferencing platform Zoom. The General Counsel's complaint alleges that AT&T Mobility Services, LLC ("Respondent") violated Section 8(a)(5) and (1) of the National Labor Relations Act ("Act") when it failed and refused to provide the Communications Workers of America, Local 4202, A/W Communications Workers of America, AFL-CIO ("Local 4202") with requested information that is relevant and necessary to the latter's performance of its representational duties. The information at issue is the Integrity Matrix, an online, interactive .pdf document that provides first-level managers with step-by-step instructions for handling violations of corporate policy, including steps for investigating and issuing discipline to unit employees.

Local 4202 first learned about the Integrity Matrix on about November 9, 2018, when one of Respondent's managers stated it was created to ensure that managers issued appropriate discipline across the board for certain policy violations. However, in 2019, Respondent disciplined two customer service representatives differently for the same violation. Local 4202 grieved both disciplines and questioned Respondent about the Integrity Matrix and how it could be applied to reach different outcomes if it was implemented to ensure disciplinary consistency. Respondent provided conflicting information. Thereafter, between September 18-26, 2019, Local 4202 made four written requests for a copy of the Integrity Matrix to assist in evaluating grievances and determining whether to elevate the existing grievances to the next step. On September 27, 2019, Respondent refused those requests, stating that the Integrity Matrix was a "manager document" and, thus, the union was "not privy to" it.

Respondent twice showed Local 4202 portions of the Integrity Matrix on a laptop screen to prove that it did not mandate discipline for policy violations; once before the written requests and once after. Both

¹ Abbreviations are as follows: "Tr." for transcript; "Jt. Exh." for Joint Exhibits; "GC Exh." for General Counsel's Exhibits; "GC Br." for General Counsel's Brief; and "R Br." for the Respondent's Brief. Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based on my review and consideration of the entire record.

times, Local 4202 reiterated its request for a physical copy to review and understand exactly what the Integrity Matrix stated and how it was applied to unit employees. Respondent refused.

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STATEMENT OF THE CASE

On September 30, 2019, Local 4202 filed the unfair labor practice charge in this case. On March 25, 2020, the Regional Director for Region 25/Subregion 33 of the National Labor Relations Board (“Board”), on behalf of the General Counsel, issued a complaint alleging that Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to provide Local 4202 with a copy of the Integrity Matrix. (GC Exh. 1(c)). On April 8, 2020, Respondent filed its answer, denying the alleged violations and raising various affirmative defenses. (GC Exh. 1(e)). On May 20, 2020, without any objection, I ordered that the hearing be conducted by video conference due to the compelling circumstances created by the Coronavirus (COVID-19) pandemic. (GC Exh. 1(f)). At the hearing, all parties were afforded the right to call and examine witnesses, present any relevant documentary evidence, and argue their respective legal positions orally. The General Counsel and Respondent filed post-hearing briefs, which I have carefully considered. Based upon the entire record, including the briefs and my observations of the credibility of the witnesses, I find that Respondent violated the Act as alleged in the complaint.

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FINDINGS OF FACT²

I. Jurisdiction and Labor Organization Status

Respondent admits, and I find, that it is a limited liability company engaged in the retail sale of wireless products and services from its facility in Rantoul, Illinois. During the 12 months prior to the issuance of the complaint, Respondent derived gross revenues in excess of \$500,000, and it sold and shipped goods valued in excess of \$50,000 to customers outside the State of Illinois. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(c) and (e)).

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Respondent further admits, and I find, that Local 4202 and the Communications Workers of America (“CWA”) are both labor organizations within the meaning of Section 2(5) of the Act. (GC Exh. 1(c) and (e)) (Jt. Exh. 12, p. 2).

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² The Findings of Fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I primarily relied upon witness demeanor. I also considered the context of the witness's testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), *enfd. sub nom.*, 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, *supra* at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), *rev'd. on other grounds* 340 U.S. 474 (1951)). Where necessary, specific credibility determinations are set forth below.

II. Alleged Unfair Labor Practices

A. Respondent's Operations and Agents

Respondent operates a call center in Rantoul, Illinois, where it employs customer service representatives ("CSRs") to answer calls and address sales, service, and billing issues. (Jt. Exh. 12, p. 1). The CSRs at the Rantoul call center report to first-level managers, or sales coaches, who, in turn, report to Area Sales and Service Manager Roberta Secor.³ Prior to Secor, John Williams was the Area Manager. (Tr. 34). Jaime Majko is the CS Team Manager Attendance Support. Trent Schott, who is based in Fort Wayne, Indiana, is AT&T Services' Lead Labor Relations Manager responsible for overseeing Respondent's employees in Ohio, Indiana, Michigan, Wisconsin, and Illinois. (Tr. 191).

B. Collective-Bargaining Relationship and Duties

At all material times, the CWA has been the exclusive-bargaining representative of a unit of Respondent's employees, including the CSRs at the Rantoul call center. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is dated February 12, 2017 to February 12, 2021. (GC Exh. 1(c) and (e)) (Jt. Exh. 1, pp. 7, 55). Article 7 of the parties' agreement contains a formal two-step grievance procedure, and Article 9 contains an arbitration procedure.

Local 4202 is authorized by the CWA to process grievances and request information for unit employees at the Rantoul call center. (Tr. 27-29) (R Br. 3 fn. 2). Dea Polchow is Local 4202's Executive Vice President, and Peggy Vermillion is Local 4202's Vice President of AT&T Mobility Network/Centers/IT. (Jt. Exh. 12, p. 2). Unit employees file individual grievances by submitting a form on the CWA website, and Local 4202 then "protects" the grievance by notifying Respondent it intends to appeal a grievance to Step 1 of the grievance procedure. (Tr. 30). Oftentimes, Local 4202 submits a request for relevant data and then schedules a meeting with the Area Manager. Polchow and/or Vermillion will attend Step 1 grievance meetings. If the grievance is not resolved at Step 1, Local 4202 will notify Respondent it is moving the grievance to Step 2. (Tr. 30). Polchow and Vermillion attend the Step 2 meeting.⁴ If the grievance remains unresolved after Step 2, Local 4202 submits it to the CWA District 4 office to decide whether to take the grievance to arbitration. (Tr. 30).

C. Company Policies

Respondent maintains various work rules and policies applicable to the Rantoul call center employees, including the Code of Business Conduct ("COBC"), Clean Desk Policy, and the Progressive Discipline Policy. (Jt. Exhs. 2-4).

The COBC broadly requires that employees act with honesty and integrity in all aspects of their employment. (Jt. Exh. 3). When dealing with customers, the COBC mandates that call center employees follow ethical sales practices, comply with applicable regulations, guard the privacy of customers' communications, and protect confidential and sensitive information. (Jt. Exh. 3, p. 9). Violations of the COBC may result in discipline, up to and including termination of employment. (Jt. Exh. 3, p. 3).

³ Secor later married and changed her last name to Chisholm. I will refer to her by her maiden name for consistency.

⁴ The parties may discuss multiple grievances at these meetings. Each party typically has one representative that speaks and one that takes notes. (Tr. 31-32). There are instances when the parties have off-the-record conversations; the occurrence and contents of those conversations are not reflected in either party's notes. (Tr. 83-86, 190).

The Clean Desk Policy establishes minimum requirements for protecting personal or sensitive information, including, but not limited to, customers' credit/payment card information. (Jt. Exh. 4, p. 1). It instructs CSRs that, except for limited circumstances, personal or sensitive information, like credit card information, must never be written down, printed, scanned, faxed, shared electronically, recorded, or "[e]ntered into Notepad or other note features on your computer."⁵ (Jt. Exh. 4, pp. 2-3). A violation of the Clean Desk Policy also violates the COBC.

The Progressive Discipline Policy is generally reserved to address job performance and attendance issues. (Jt. Exh. 2, p. 2). It provides for the following disciplinary progression: (1) counseling notice, (2) written warning, (3) final written warning/suspension, and (4) termination. But it states that acts of misconduct, failure to follow corporate policies, and COBC violations are subject to immediate discipline, up to and including termination. When an offense is of a serious nature, suspension or termination may occur at the first offense without prior discipline. (Jt. Exh. 2, p. 2).

D. Integrity Matrix

In July 2015, AT&T acquired satellite television service provider DirecTV, and integrated it into the company's mobility division, along with Respondent. At the time, DirecTV was in the midst of litigation over failing to disclose to customers certain fees or contractual obligations when they placed new orders or made changes to their accounts, and over failing to disclose to customers that a credit check was performed before sending out equipment. (Tr. 114). During the integration process, AT&T learned that part of the reason for these issues was that DirecTV lacked a consistent process for how its call center managers addressed customer complaints or issues, including the above, as well as other (in)actions that violated the COBC and federal regulations. (Tr. 111-114). In late 2016 and early 2017, AT&T sought to address this void by creating the Integrity Matrix and implementing its use throughout its mobility division. As stated, the Integrity Matrix is an online, interactive .pdf document containing step-by-step instructions for call center managers when handling certain COBC violations, including steps for investigating and issuing discipline to unit employees. (Tr. 118; 135-139; 153-157)). It is described as an "electronic decision tree," consisting of questions and a series of action steps. (Tr. 125-130; 143-145).

The evidence regarding the Integrity Matrix is limited to witness testimony. Lead Human Resources Specialist Tammy Salman explained how it generally works. (Tr. 125-130; 143-147). The Integrity Matrix is only available to authorized call center managers who access the document by logging onto Respondent's secured internal (Sharepoint) website by entering their username and password. The first question the Integrity Matrix asks is how the manager became aware of the potential COBC violation. There are four options: process monitoring, customer complaints/survey feedback, a report from another employee, or direct managerial observation. Each option has a "bubble" for the manager to click to select. The second question is what type of COBC violation is at issue. The Integrity Matrix only applies to certain, high-volume COBC violations, and those violations are: customer mistreatment, sales integrity (e.g., fraud), or legal and regulatory compliance. Again, each option has a "bubble" for the manager to click to select.

Based on the manager's selections, the Integrity Matrix produces a set of step-by-step instructions or action steps. They include that the manager must: (1) review the contents of the customer complaint or issue and research what happened; (2) contact the customer to resolve the complaint or issue; (3) determine what questions to ask the employee(s) involved in the (in)action giving rise to the complaint or issue; (4) interview the employee(s) and gather all relevant information, including a copy of the call; (5) review the personnel files to determine what, if any, training, coaching, or prior discipline the employee(s) received;

⁵ Notepad is a text editor program included with Microsoft Windows to create, open, and read plaintext files.

(6) contact higher management (usually the Area Manager) to review the results of the investigation and discuss what, if any, discipline to recommend to address the COBC violation; (7) if discipline is recommended, consult with the Employee Relations Manager (“ERM”) before taking any action; (8) document the results of the investigation, regardless of whether it resulted in discipline; and (9) notify the Integrity Team about the outcome of the investigation.⁶ Managers who fail to follow the Integrity Matrix may be disciplined. (Tr. 162). However, a unit employee may be disciplined for a COBC violation even if the manager fails to follow the Integrity Matrix. (Tr. 168).

Lead Labor Relations Manager Trent Schott also testified about the Integrity Matrix, and he covered how it addresses discipline. According to Schott, the Integrity Matrix does not mandate or prescribe certain levels of discipline to address specific COBC violations. Rather, for each type of violation, it provides a range of options for the manager to consider on a case-by-case basis. The options generally include the entire gamut of steps set out in the Progressive Disciplinary Policy, including counseling notice, written warning, final written warning, and termination.⁷ The manager also could recommend no discipline. (Tr. 189-190; 207-208).⁸

⁶ The Integrity Matrix can be formatted and printed, but there is no evidence about its total size/pages. (Tr. 208).

⁷ Schott testified as follows in response to my questions about how the Integrity Matrix addresses discipline:

JUDGE GOLLIN: Okay. I have a couple -- at least one question or maybe a couple question, but with regard to the Matrix, you were talking about, you know, you -- you click on various buttons and it opens up additional windows, and provides further guidance to the manager, and when you get close to the end of following the path, it gives -- and I don't want to put words in your mouth, but I just want to understand -- it gives a range or it gives options about possible discipline for the alleged offense; is -- is that right?

THE WITNESS: Correct.

JUDGE GOLLIN: Okay, is the -- are the options or range of discipline that are set forth, and -- to your knowledge, are they the same for all of the various offenses that come up under the Matrix, or is -- or do the range or options change depending on the alleged offense?

THE WITNESS: So, the -- the verbiage is different. There are -- there are some categories they click on, and it will say, you know, again, case by case basis, depending on the outcome of the investigation, the following actions can occur, and it will list Counseling, Written Warning, Final Written Warning, Termination, which are all of the steps of discipline.

And then, there are others that it doesn't list specifically each step of discipline, but it will say, “The following may occur,” and this isn't word for word here, of course, but -- but the verbiage is slightly different where it says, “Discipline action may be taken, up to and including Final Written Warning and Termination.”

JUDGE GOLLIN: Okay.

THE WITNESS: But the “up to and including,” obviously, up to Final Written Warning and Termination are the Counseling and the Written Warning ...

(Tr. 207-208).

⁸ Salman and Schott offered conflicting testimony about how the Integrity Matrix addresses discipline. I credit Schott over Salman, as he was more candid, forthright, and consistent in his testimony on this topic. Salman, in contrast, was evasive. For example, on direct examination, Respondent's counsel asked Salman on direct examination, “What does the Integrity Matrix say, if anything, about possible discipline that may apply in the event of a [COBC] violation?” Salman responded, “It -- it does not say that discipline will apply -- let me go back ... It is a managerial procedural guide. So, if you could envision, it is a 1-2-3 step-by-step set of instructions about action steps a manager must take, but it does not require discipline in the procedural guide.” (Tr. 118) (ellipsis in original). On cross examination, Counsel for General Counsel asked Salman whether the Integrity Matrix includes examples that help to inform the manager when they are deciding whether to recommend discipline, and Salman responded, “It does not. It does not have any examples. It does not say any discipline requirements.” (Tr. 147). Counsel for General Counsel later asked Salman whether once the manager follows the Integrity Matrix, do they look at whether discipline is appropriate and the level of discipline, and Salman responded:

So -- so the level of discipline is not a key of the Integrity Matrix. They would need to go utilize their Mobility Progressive Discipline Policy to determine levels of discipline. But, in fact, on the Integrity

E. Grievances, Meetings, and Information Requests

Respondent monitors CSRs to ensure they are complying with the COBC. Monitoring is done both internally and externally by contractors who create Service Order Analyst Reports (“SOAR”) based on their observations. (GC Exh. 2, p. 1). In 2018, Respondent began using SOARs to discipline unit employees for COBC violations. (GC Exh. 2). On August 28, 2018, Local 4202 filed a regionwide grievance challenging this practice (“SOAR Grievance”). (Jt. Exh. 5, pp. 1-2).

On November 9, 2018, the parties met at Step 1 to discuss the SOAR Grievance in the conference room at the Rantoul call center. (GC Exh. 2). Dea Polchow and Local 4202 Steward Skyler Martin attended for Local 4202, and John Williams, who was Area Manager at the time, and Roberta Secor attended for Respondent. According to Polchow’s meeting notes, Martin raised a series of questions and objections about the use of SOARs to discipline unit employees for COBC violations. She brought up an employee who was disciplined for violating the COBC for misquoting a price by \$2.00, and she pointed out that if Respondent followed its past practice, the mistake would have been handled with an informal coaching and a call to the customer to correct the error. (GC Exh. 2, p. 5). Martin asked what had changed to now require an investigation and disciplinary action to address such an error. Williams explained that Respondent created an Integrity Team and Integrity Matrix to address certain COBC situations. Williams explained that the Integrity Matrix “was put [there] for corrective action.” (GC Exh. 2, pp. 5-6). He also stated it had checks and balances in place to protect the best interests of the employee, the customer, and the company. (GC Exh. 2, p. 6). At the hearing, Polchow recalled that Williams stated the Integrity Matrix was implemented to make sure the appropriate discipline issued for certain COBC violations across the board, or across the nation, and that managers had no choice but to follow it. (Tr. 40, 45-46, 80-81).⁹ The parties later agreed to adjourn the Step 1 meeting over the SOARs Grievance and resume at a future date.

On about January 24, 2019,¹⁰ Respondent issued Patricia May, a CSR at the Rantoul call center, a final written warning for violating the Clean Desk Policy and the COBC after she typed a customer’s credit card information in Notepad on her computer. (Jt. Exh. 12). On about January 28, Peggy Vermillion notified Respondent that May had filed a grievance over her final written warning (“May Grievance”).

On about March 18, Respondent issued Brenda Harris, a CSR at the Rantoul call center, a counseling for violating the Clean Desk Policy and the COBC by typing a customer’s credit card information in the Clarify program on her computer.¹¹ On about April 16, Vermillion notified Respondent that Harris filed a grievance over her counseling (“Harris Grievance”).

Matrix, it -- it does, in fact, say, that it could -- that it may lead to disciplinary action, meaning it may lead to one of the four Mobility Progressive Discipline Steps under the Code of Business Conduct violations, which is a counseling notice, a written warning, a final written warning, or a termination. (Tr. 151-152).

⁹ On cross-examination, Respondent’s counsel challenged Polchow about her recollection of what Williams’ said during this meeting, pointing out that certain phrases, such as “across the board” or “across the nation,” are not reflected in her meeting notes. (Tr. 81-82). Polchow testified that while her notes do not reflect it, she recalled Williams stating that ERMs used the Integrity Matrix to issue the appropriate discipline across the board or across the nation. (Tr. 81). Secor, who testified for Respondent, could not recall this meeting. I credit that Polchow truthfully recalls Williams making these statements because, as discussed below, she later asked Schott what Williams’ meant by disciplining “across the board” during the August 8, 2019 grievance meeting.

¹⁰ Hereinafter, all dates refer to 2019, unless otherwise stated.

¹¹ Clarify is software program by Nortel that allows a company to access a customer’s historical sales and service information when they call the center.

On April 26, the parties met at Step 1 on the May Grievance in the conference room at the Rantoul call center. Polchow, Vermillion, Secor and Majko attended the meeting. At the meeting, Secor and Majko offered to resolve the grievance by reducing May's discipline so she was no longer facing termination. Polchow and Vermillion discussed the offer with Local 4202's President and later rejected the offer.¹²

Following the meeting, Respondent denied the grievance. Three days later, Vermillion moved it to Step 2. On May 7, the parties met at Step 2 over the May Grievance. The parties reached no resolution, and Local 4202 submitted the grievance to the CWA District 4 office to determine whether to submit it to arbitration.

On May 17, the parties met to continue their Step 1 meeting on the SOAR grievance. (Jt. Exh. 5, pp. 3-4). They also met at Step 1 on the Harris Grievance. Polchow and Peggy Vermillion attended for Local 4202, and Secor and Majko attended for Respondent. During the meeting over the SOAR Grievance, Polchow asked questions about the Integrity Matrix, which Secor stated she could not answer because it was "management proprietary information." (GC Exh. 3, p. 3-4). The meetings ended without a resolution, and both grievances were later moved on to Step 2.

Polchow testified that after Local 4202 became aware that Respondent disciplined May and Harris differently for the same COBC violation, it intended to request a copy of the Integrity Matrix to see and understand how it addressed discipline, because up to that point Williams informed Local 4202 that Respondent used the Integrity Matrix to ensure discipline was consistent across the board. (Tr. 99).

On August 8, the parties held Step 2 meetings on the SOAR Grievance and the Harris Grievance in the conference room at the Rantoul call center. Polchow, Vermillion and Majko attended this meeting, along with Trent Schott. (GC Exhs. 4 and 8). According to each party's meeting notes, Polchow asked Schott about John Williams' statement during the first Step 1 meeting that ERMs issue "across the board" discipline for COBC violations. (GC Exh. 4, p. 2)(GC Exh. 8, p. 2). Schott responded that he assumed what Williams was referring to was that the company was trying to keep discipline consistent for those violations. (GC Exh. 4, p. 2)(GC Exh. 8, p. 2). Later in the meeting, Polchow asked Schott to explain what the Integrity Matrix was and how it was used. Schott told her he understood it was a "guideline to use to determine the appropriate level of discipline." (GC Exh. 4, p. 4) (GC Exh. 8, p. 2).¹³ Polchow then asked if the Integrity Matrix required set discipline for particular COBC violations, and Schott answered that it provided managers with guidelines depending on the severity of the COBC violation. (GC Exh. 4, p. 4) (GC Exh. 8, p. 2). He noted that disciplinary decisions are made on a case-by-case basis, but certain offenses, such as theft, likely would result in termination. (GC Exh. 4, p. 4).

Later during the meeting, Polchow asked Schott for a copy of the Integrity Matrix. She stated she and Vermillion wanted to see it because they believed it addressed discipline and they were concerned, based on the discipline issued to May and Harris, that it was not being applied consistently. She referenced Williams' earlier statements that it was there to ensure disciplinary consistency across the board. (Tr. 62-

¹² At some point during this April 26 meeting, there was mention of the Integrity Matrix. While discussing the May grievance, either Majko or Secor turned their 14-inch laptop screen toward Polchow and Vermillion to show them a portion of Integrity Matrix. The record does not reflect what exactly prompted this, or what, if anything, Majko or Secor said about the document. Polchow and Secor had different recollections of what happened. Polchow testified she looked at the screen briefly but could not see what is said. Secor testified that neither Polchow nor Vermillion looked at the screen, because they left the conference room to call Local 4202's President to get approval on an offer Respondent made to reduce May's discipline. When Polchow and Vermillion returned and reported that the Local 4202 President rejected the settlement offer, and they were going to continue to pursue the grievance, the meeting essentially ended without any further discussion about the Integrity Matrix. (Tr. 37-38) (Tr. 169-171).

¹³ At the hearing, Schott did not deny making this statement, but rather stated that he misspoke if he did, and that he had several conversations with Local 4202 after this meeting where he felt he made it clear that the Integrity Matrix did not prescribe specific discipline. (Tr. 196). Schott did not specify during what conversations he clarified this point, or what specifically he said that made this point clear.

63). At the hearing, Schott acknowledges that Polchow and Vermillion requested the Integrity Matrix because they believed it prescribed discipline, and they felt that discipline was not being applied consistently, and that different levels were given in different circumstances. (Tr. 191-192). Schott told Polchow he could not provide them with a copy of the Integrity Matrix because it was a management training guide. (Tr. 47; 197-198).¹⁴ Schott made no effort to bargain an accommodation. (Tr. 41).

Schott, however, told Polchow and Vermillion that while he could not provide them with a copy of the Integrity Matrix, he would show them it on his laptop screen so that they could see what it looked like and what it said.¹⁵ (Tr. 187-188). Schott testified he then showed them “a couple different screens” and went down “several different paths” to prove to them that the Integrity Matrix does not mandate a certain level of discipline for each type of COBC violation. He explained that it lists a range of discipline depending on the outcome of the investigation, and that the managers decide on a case-by-case basis what, if any, discipline to issue. Schott testified he showed them the Integrity Matrix “[l]ong enough to give them a few different examples.” (Tr. 190).

Polchow testified Schott showed them his laptop screen for about 30 to 40 seconds. (Tr. 41). She was sitting across the table from Schott’s laptop, about 4-5 feet away. She testified she could not read the screen because of her vision, but she did not mention that to Schott. Nor did she ask him if she could have a closer look or more time to review it. (Tr. 91). Polchow responded that Local 4202 still needed a physical copy of the Integrity Matrix to take with them so that they could go through it at their leisure. (Tr. 191-192). Schott again refused.

Between September 18-26, Local 4202 made four written requests for a copy of the Integrity Matrix. (Jt. Exhs. 8-11). The initial request was on a “Request to Employer for Relevant Data” form that Local 4202 routinely submits with grievances. These forms have language stating:

In order to make a determination as to whether a valid grievance exists, or if an existing grievance should be elevated to the next step, the Union requires the following information. Contractual time limits for proper filing and escalation of grievances make it necessary that we receive this information within seven (7) days. If an extension is needed, please contact the Union Representative who originated this request, unless another Union Representative has authorized you. Thank you for your prompt attention.

(Jt. Exh. 8, p. 2).

On about September 18, Polchow emailed Majko a Request to Employer for Relevant Data form seeking Alice Harris’s IEX Reports¹⁶ from February 5, 2012 through March 20, 2019, a copy of the Clean Desk Policy, and the Integrity Matrix for Issuing COBC. (Jt. Exh. 8, p. 2). That same day, Majko provided Polchow with the Clean Desk Policy and Harris’s IEX Reports. (Jt. Exh. 9). A day or two later, Polchow emailed Majko a copy of the Request to Employer for Relevant Data form, again requesting the Integrity Matrix. On September 20, Majko emailed Polchow instructing her to contact Schott about the request. That day, Polchow emailed Schott requesting a copy of the Integrity Matrix. (Jt. Exh. 10). There was no response. On about September 26, Polchow sent Schott another email asking for the Integrity Matrix. The following day, on September 27, Schott sent Polchow an email stating, “the item you are requesting is a Manager document thus the CWA is not privy to this item.” (Jt. Exh. 11). Local 4202 filed the unfair labor practice charge at issue on September 30.

¹⁴ Schott could not recall if he said “proprietary” or “confidential,” but he allegedly made “the point clear.” (Tr. 206-207). The record does not reflect, and Respondent does not argue, what Schott allegedly said to clarify this point.

¹⁵ This portion of the meeting is not in either party’s notes because they agreed to go off the record. (Tr. 187; 190).

¹⁶ These are reports about an employee’s adherence with their work schedules and scheduled duties.

In about October, during an unidentified grievance meeting, Schott again showed Polchow portions of the Integrity Matrix on his laptop screen. (Tr. 95). The evidence about this meeting is limited. It is not clear what Schott showed Polchow. Polchow was sitting about 4-5 feet away, and she was unable to see the screen. She again did not say anything to Schott. After Schott finished, Polchow stated that she still wanted a copy “to actually be able to bring it back and review it.” (Tr. 95).

Local 4202 submitted all three grievances to the CWA District 4 office for it to determine whether to take them to arbitration. Those grievances remained pending as of the hearing. (Tr. 42-43). Polchow testified the information also is needed because Respondent was continuing to use the Integrity Matrix to discipline unit employees differently for committing the same COBC violations, but she did not provide specifics about these other instances. (Tr. 64-65).

LEGAL ANALYSIS

A. Allegations and Issues

The General Counsel alleges Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide Local 4202 with a copy of the Integrity Matrix that it requested, in writing, four times between September 18-26, to assist in the performance of its representational duties.¹⁷ Respondent denies the alleged violations and raises various affirmative defenses.

The key issues to be decided are: (1) whether the Integrity Matrix is relevant and necessary to Local 4202 in the performance of its representational duties; (2) if so, whether Respondent has articulated a legitimate and substantial interest for not producing the Integrity Matrix that outweighs Local 4202’s need for it; (3) if so, whether Respondent bargained with Local 4202 over an accommodation that balanced Respondent’s interest(s) with Local 4202’s need(s); and (4) if not, whether Respondent offered or provided the information in an alternative manner that was not so burdensome or time consuming as to impede the purpose for which Local 4202 requested it.

B. Relevance of Integrity Matrix

Section 8(a)(5) of the Act requires that an employer bargain collectively with the union representing its employees. This duty to bargain encompasses a general obligation to provide, upon request, information that is relevant and necessary to the union’s performance of its representational duties, including the evaluation and processing of a grievance or determining whether to submit a grievance to arbitration. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-438 (1967); *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000); *Safeway Stores*, 236 NLRB 1126, 1126 fn.1 (1978). However, a pending grievance is not a prerequisite to receiving the information, because the union is entitled to review the requested information to determine whether a grievance is warranted. See *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014) (citing *Disneyland Park*, 350 NLRB 1256, 1258 (2007)).

Generally, information concerning unit employees’ terms and conditions of employment is presumptively relevant and must be produced. *NP Palace, LLC*, 368 NLRB No. 148, slip op. at 4 (2019); *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011). The rationale for this is that such information goes to the “core of the employer-employee relationship.” *Disneyland Park*, 350 NLRB at 1257. This

¹⁷ The Board has held a violation of Section 8(a)(5) is also a derivative violation of Section 8(a)(1) of the Act. See *Bemis Company, Inc.*, 370 NLRB No. 7, slip op. at 1 fn. 3 (2020); *Altura Communication Solutions, LLC*, 369 NLRB No. 85, slip op. at 51 fn. 49 (2020).

includes information related to the discipline of unit employees, *Security Walls, LLC*, 361 NLRB 348 (2014); *Grand Rapids Press*, 331 NLRB 296 (2000); *Booth Newspapers, Inc.*, 331 NLRB 296, 300 (2000), including internal investigative reports that can form the basis for discipline. *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1351 (2010); *Postal Services*, 332 NLRB 635, 636 (2000). The union has no burden when requesting information that is presumptively relevant. *Colorado Symphony Assn.*, 366 NLRB No. 60 slip op. at 4 fn. 7 (2018). See also *Southern California Gas Co.*, 346 NLRB 449 (2006); *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976).

By contrast, when the information is not presumptively relevant, the union bears the burden of establishing relevance. *Disneyland Park*, 350 NLRB at 1257; *Richmond Health Care*, 332 NLRB 1304 (2000); *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), *enfd.* 715 F.2d 473 (9th Cir. 1983). This burden is “not exceptionally heavy” as the Board applies a “liberal, discovery standard” when assessing the relevance of requested information. *A-1 Door & Building Solutions*, 356 NLRB at 500; *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). The information does not need to be dispositive of the issue between the parties; it need only have some bearing on it. Thus, an employer must furnish information that is of probable or potential relevance to the union in carrying out its statutory responsibilities. *PAE Aviation and Technical Services LLC*, 366 NLRB No. 95, slip op. at 3 (2018); *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991).

Suspicion alone is not enough, nor is an articulation of general relevance. *G4S Secure Solutions (USA)*, 369 NLRB No. 7, slip op. at 2 (2020). The union must have a reasonable belief, supported by objective evidence, that the requested information is relevant, unless the relevance of the information should have been apparent to the employer under the circumstances. *Disneyland Park*, 350 NLRB at 1258; *Shoppers Food Warehouse*, 315 NLRB at 259. In determining relevance, the Board does not pass upon the merits of the dispute, nor is the union required to show it relied upon accurate, non-hearsay, or ultimately reliable information when making the request. *Teachers College, Columbia University*, 365 NLRB No. 86, slip op. at 4 (2017), *enfd.* 902 F.3d 296, 302 (D.C. Cir. 2018); *Postal Service*, 337 NLRB 820, 822 (2002).

Respondent contends the Integrity Matrix is not presumptively relevant because it only applies to management employees, and it does not inform, suggest, or imply when to issue discipline or what level of discipline to issue to unit employees. Rather, it instructs managers to evaluate potential COBC violations on a case-by-case basis, and, if a violation is found, it indicates that managers may, not must, take appropriate disciplinary action, up to and including termination. If a manager fails to follow the Integrity Matrix, the manager may be disciplined, but that does not affect whether the unit employee is disciplined.

The General Counsel counters that because the managers must follow the Integrity Matrix when investigating unit employees that could result in discipline, up to and including termination, it is presumptively relevant because it directly relates to their terms and conditions of employment, including the core issue of whether their employer-employee relationship continues or ends.

I find that the Integrity Matrix is presumptively relevant. It is a step-by-step procedural guide that call center managers must follow when investigating and evaluating unit employees for certain COBC violations. While it may not mandate discipline for specific violations, it outlines the information the managers must gather and evaluate when assessing whether to recommend discipline; it provides a range of options for the managers to consider when recommending discipline; and it sets forth the procedures the managers must follow before and after issuing discipline. I find the information managers must consider, and the process they must follow, when evaluating and issuing discipline to unit employees directly relates to the latter’s terms and conditions of employment, even if it does not always result in discipline.

Even if the Integrity Matrix is not deemed presumptively relevant, I find Local 4202 has established its relevance in this case. At the August 8 meeting, when Polchow orally asked Schott for a copy of the Integrity Matrix, she stated Local 4202 believed the document played a role in the discipline issued to May and Harris. Each of the written requests at issue specifically states the information is requested to determine whether a valid grievance exists or whether an existing grievance should be elevated to the next step, with specific reference to the Harris Grievance. Also, at the August 8 meeting, Polchow explained to Schott that Local 4202 wanted a copy to review to understand how the Integrity Matrix addressed discipline. In particular, she wanted to understand how it could result in substantially different discipline for May and Harris when Williams previously stated it was used to ensure appropriate discipline issued across the board. Respondent acknowledges that Local 4202 requested a copy of the Integrity Matrix to better understand how, as it appeared, it was not always applied consistently and resulted in different outcomes. The Board has held information related to the investigation of possible disparate treatment in the disciplining of unit employees is relevant. *Postal Service*, 307 NLRB 1105, 1109-1110 (1992). See also *St. Francis Regional Medical Center*, 363 NLRB No. 69, slip op. at 22 (2015); *NTN Bower Corp.*, 356 NLRB 1072, 1139 (2011).

Additionally, during the August 8 meeting, when Polchow asked Schott about Williams' "across the board" comment, Schott stated that Williams likely meant the company implemented the Integrity Matrix to try to keep discipline consistent. Later, Schott explained to Polchow that the Integrity Matrix was a "guideline to use to determine the appropriate level of discipline." When Polchow then asked if the Integrity Matrix set or required specific discipline, Schott answered that it provided guidelines depending on the severity of the COBC violation. In its post-hearing brief, Respondent argues these were all misstatements that Schott later "cured" when he told Polchow "on many occasions" after August 8 that the Integrity Matrix did not mandate whether and what level of discipline the company should issue to address a violation. (R. Br. 14). I reject this argument. Schott never recanted, corrected, or cured the earlier statements he or Williams made. He showed Local 4202 portions of the Integrity Matrix and stated that it did not prescribe certain discipline, but rather provided a range of disciplinary options, and managers could make disciplinary recommendations on a case-by-case basis. These are seemingly contradictory, not clarifying, statements, which further serve as objective evidence supporting Local 4202's reasonable belief that having a copy of the entire Integrity Matrix to review is relevant to understanding how it addresses discipline of unit employees, and how it may have been applied to result in the divergent outcomes for May and Harris. Another possibility raised by these various statements is that call center managers have the discretion to recommend discipline on a case-by-case basis, but the ERM, on review, is responsible for ensuring that the discipline is consistent. The bottom line is the evidence is not clear how discipline is handled under the Integrity Matrix, and that is what Local 4202 was attempting to determine by requesting a copy. Moreover, even if the Integrity Matrix states that discipline is assessed on a case-by-case basis, a full understanding of the steps managers must take when investigating possible COBC violations, including the information they are to gather and evaluate about the unit employees, and the process they must go through when making disciplinary recommendations, is relevant to Local 4202 because it has some bearing on whether and how to challenge the discipline through the grievance/arbitration procedures. A union has the right to information that will allow it to challenge discipline and the reasons given for the discipline. See, e.g., *Southern California Gas Co.*, 346 NLRB at 455; *Postal Service*, 337 NLRB at 822.

Based on the foregoing, and to the extent necessary, I find Local 4202 has met its burden of establishing that the Integrity Matrix is relevant and necessary to its representational duties.

C. Respondent's Responses and Defenses

Under Board law, once a union has demonstrated the relevancy of the requested information, the burden shifts to the employer to establish the information is not relevant, does not exist, or could not be

furnished based on a legitimate and substantial interest. *Samaritan Medical Center*, 319 NLRB 392, 398 (1995)(citing *Somerville Mills*, 308 NLRB 425 (1992)); *Postal Service*, 276 NLRB 1282 (1985).

1. *Respondent Failed to Rebut Relevance*

Respondent first contends it rebutted relevance. According to Respondent, Local 4202 requested the Integrity Matrix believing that it mandated specific levels of discipline and to ensure the company was issuing discipline in accordance with the levels prescribed therein, and Schott disproved that belief when he showed Polchow and Vermillion portions of the Integrity Matrix addressing discipline on his laptop. The record does not reflect how much or what portions of the Integrity Matrix were (not) shown to Local 4202. The Board has held a union is not required to simply take the employer's word for it regarding what portions of the requested information are relevant. See *DirectSat USA, LLC*, 366 NLRB No. 40, slip op. at 7 (2018), mot. to intervene denied 366 NLRB No. 141 (2018), enfd. 925 F.3d 1272 (D.C. Cir. 2019); *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344 (2012). Nor must the union accept only those portions of the information the employer believes to be relevant and is willing to provide. See *FirstEnergy Generation, LLC*, 362 NLRB 630, 636 (2015); *Shoppers Food Warehouse*, 315 NLRB at 259. Absent a valid defense, the union has the right to review the information for itself and draw its own conclusions.

Moreover, simply showing that the Integrity Matrix does not prescribe certain levels of discipline does not address Local 4202's other stated interests, which included wanting to review and determine how it addressed discipline, how it is applied to unit employees, and how it resulted in substantially different outcomes for May and Harris. Respondent's repeated response to this query is that discipline under the Integrity Matrix is assessed on a case-by-case basis. But that is contradicted by Williams' and Schott's statements that it is intended to ensure disciplinary consistency. To reiterate, a union's explanation of relevance need not establish that the requested information is dispositive of the issue between the parties; only that it has some bearing on it and will be of potential or probable use to the union in carrying out its representational duties. *Public Service Co. of New Mexico*, 360 NLRB at 574; *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997), enfd. 172 F.3d 57 (9th Cir. 1999). I find Local 4202 has established that the Integrity Matrix has some bearing on the evaluation and processing of the May and Harris grievances, as well as evaluating possible other disparate discipline issued to unit employees for violating the COBC.

2. *Respondent Failed to Establish a Confidential or Proprietary Interest or Bargain with Local 4202 Over an Accommodation.*

Respondent next contends that even if the Integrity Matrix was relevant, it was a confidential or proprietary document. A party asserting this defense has the burden to prove it has a legitimate and substantial interest in protecting against the information's disclosure that outweighs the requesting party's need for the information. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979). See also *Jacksonville Area Assn. for Retarded Citizens*, 316 NLRB 338, 340 (1995). The Board evaluates this defense based on the facts in each case. See *Northern Indiana Public Service Co.*, 347 NLRB 210, 211 (2006). Furthermore, "when a union is entitled to information concerning which an employer can legitimately claim a partial confidentiality interest, the employer must bargain toward an accommodation between the union's information needs and the employer's justified interests." *Oncor Electric Delivery, LLC*, 369 NLRB No. 40, slip op. at 3 (2020) (quoting *Pennsylvania Power Co.*, 301 NLRB at 1105-1106). The onus is on the employer because it is in the better position to propose how best it can respond to a union's request for information. *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 21 (D.C. Cir. 1998). The appropriateness of the accommodation depends on the circumstances of each case. *Detroit Edison*, 440 U.S. at 314.

At the time of the requests, Schott stated the Integrity Matrix is confidential or proprietary because Respondent used it to train and guide managers in handling certain COBC violations. Respondent,

however, does not specify what about its contents qualifies as confidential or proprietary; only that it is. A blanket claim that information is confidential or proprietary, without more, does not satisfy the employer's burden. *Detroit Edison*, 440 U.S. at 314. See also *Detroit Newspaper Agency*, 317 NLRB 1071, 1072 (1995). Where the employer fails to meet its burden of demonstrating a legitimate and substantial interest in keeping the information private, the union's right to the information is effectively unchallenged, and the employer must furnish the requested information. *Watkins Contracting, Inc.*, 335 NLRB 222, 226 (2001).

In its post-hearing brief, Respondent argues for the first time that the Integrity Matrix is confidential and proprietary because telecommunications is a highly competitive and heavily regulated industry, and upper management spent nearly a year creating the Integrity Matrix as a way to give the company a competitive advantage by creating a process for managers that efficiently and effectively ensures employees comply with federal laws and regulations. Respondent failed to present evidence to support this contention or argue how that advantage would be jeopardized if the Integrity Matrix was shared with Local 4202.

Absent further evidence, I find Respondent has done nothing more than make a blanket claim, leaving Local 4202's right to the information effectively unchallenged. See also *American Medical Response West*, 366 NLRB No. 146, slip op. 4 (2018) (employer violated the Act when it raised but failed to establish confidentiality interest for not disclosing names of witnesses relied upon to discipline unit employee). Even if Respondent met its burden, it failed to bargain with Local 4202 over an accommodation. *PAE Applied Technologies, LLC*, 367 NLRB No. 105, slip op. at 23 (2019); *Borgess Medical Center*, 342 NLRB 1105, 1105-1106 (2004). Accordingly, I find Respondent violated Section 8(a)(5) when it failed to furnish purportedly confidential or proprietary (but relevant) information and failed to engage in accommodative bargaining about its request. *NP Palace, LLC*, 368 NLRB No. 148, slip op. at 7.

D. Alternative Method of Production

Respondent next contends that it satisfied any statutory obligation it may have had when it showed Local 4202 portions of the Integrity Matrix on a laptop screen.¹⁸ For support, Respondent primarily relies on *Cincinnati Steel Castings Co.*, 86 NLRB 592 (1949), in which the employer refused the union's request for a written list of the employees in the bargaining unit, including their wage rates and classifications, but provided the requested information to the union orally. The Board found this did not violate the Act, holding that "the employer is [not] obligated to furnish such information in the exact form requested by the representative. It is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining." *Id.* at 593. In other words, the employer must establish that it provided or offered to provide the union with the requested information in an alternate form that was not so burdensome or time consuming as to impede the union's reason for requesting it.

Cincinnati Steel Castings is distinguishable because the employer in that case provided *all the information the union requested*, just in a different form. That did not happen here. As described, Schott clicked through "a couple different screens" and showed Polchow "a few examples" from the Integrity Matrix of what he believed to be relevant. In the absence of a valid defense, Respondent was obligated to provide the entire document. *Southern California Gas Co.*, 346 NLRB at 453-454 (employer failed to adequately respond to request for settlement agreement when it directed union to a copy posted on the company website, as opposed to providing a copy of the executed agreement).

¹⁸ Respondent also cites to the April 26 grievance meeting, where Secor or Majko offered to show or showed Polchow portions of the Integrity Matrix on a laptop screen. I find Respondent's actions at this meeting are irrelevant because they predate the information requests at issue by over 4 months. And, as discussed below, I do not find that showing a portion of the document satisfies Respondent's statutory obligation.

Even if Respondent had offered to show Local 4202 the entire Integrity Matrix, I do not find Respondent established that would have been an adequate alternative to providing a copy. The Board has addressed whether an employer meets its statutory obligation by allowing the union to view and take notes of a requested document in lieu of producing an actual copy. See generally, *Stella D'oro Biscuit Co., Inc.*, 355 NLRB 769 (2010), enf. denied, *SDBC Holdings, Inc. v. NLRB*, 711 F.3d 281 (2013); *Union Switch & Signal, Inc.*, 316 NLRB 1025 (1995); *Roadway Express, Inc.*, 275 NLRB 1107, 1107 fn.4 (1985); *American Telephone & Telegraph Co.*, 250 NLRB 47, 54 (1980), enf. sub nom. *Communication Workers Local 1051 v. NLRB*, 644 F.2d 923 (1st Cir. 1981); and *Abercrombie & Fitch Co.*, 206 NLRB 464 (1973). In *American Telephone & Telegraph Co.*, the Board outlined several factors to consider when making this determination, including: the volume and nature of the information involved, whether furnishing a copy would have given the union greater assurance of the accuracy and completeness of the information, the comparative costs and convenience to both the employer and the union of providing a copy, and whether grievance meetings would be shortened and the entire grievance process expedited and otherwise facilitated by providing a copy. 250 NLRB at 54. The focus appears to be on the size and complexity of the document at issue. Compare *Roadway Express, Inc.*, supra (no violation where employer refused to provide copy of one-page customer complaint that was the basis of employee's discharge, but offered the union the opportunity to review personnel file with complaint and to take notes); and *Abercrombie & Fitch Co.*, supra (no violation where employer refused to provide copy but allowed union to review and take notes on employee's half-page confession and 3 pages of uncomplicated cash register records), with *Stella D'oro Biscuit Co., Inc.*, supra (violation where employer refused copy but allowed union to view 19-page financial statement and take notes); *Union Switch & Signal*, supra (violation where employer refused copy but allowed union to review 12-page air quality study and take notes); and *American Telephone & Telegraph Co.*, supra (violation where employer refused copy but permitted union to review 90-page document and take notes).

Here, the record is unclear as to the Integrity Matrix's size and complexity. It appears from Lead Human Resources Specialist Salman's description that it is at least 5-6 pages (i.e., the two pages of questions and options, and at least three pages (one for each of the three listed COBC violations) of step-by-step instructions; it is unclear if the disciplinary options for each violation are contained on separate pages). However, the fact that Salman and Schott could not agree on what the Integrity Matrix states about discipline strongly suggests it is not a simple or straightforward document that is easily understood, particularly if it is only partially or briefly viewed. Additionally, there can be little doubt that the time and expense it would have taken for Respondent to print and provide Local 4202 with a copy of the document would have been less than the time Respondent spent attempting to answer Local 4202's questions, and it certainly would have ensured greater accuracy and completeness of the information provided. It also would have been more efficient and effective to the grievance process to provide Local 4202 with a copy than continuing to show it in piecemeal fashion over multiple meetings.

Respondent contends Local 4202 is at fault because it never objected being shown portions of the Integrity Matrix on the laptop as a means of responding to its requests. It is fair to question why Polchow never informed Schott that she could not see the laptop screen, or why she never asked him for more time to review it. But Polchow did not remain silent; nor did she indicate she was satisfied with seeing portions of it on a laptop screen. Both times, Polchow told Schott that Local 4202 still wanted a physical copy of the Integrity Matrix to take back and review on its own. A union cannot reasonably be expected to identify what portions of a document it wants when it has never seen the entire document or been fully apprised of its contents. That is why Local 4202 repeatedly requested the entire document. Schott, however, rejected those requests and did not inquire further or make any other offers to satisfy Local 4202's request.

Respondent also argues Local 4202 acted prematurely by filing the charge. The Board recently held that a union under certain circumstances cannot simply sit back and wait to file charges if the employer fails to provide it with the information in the form requested. See *Oncor Electric Delivery, LLC*, 369 NLRB

No. 40, slip op. at 4; *Barnard College*, 367 NLRB No. 114, slip op. at 1 fn. 1 (2019).¹⁹ In *Oncor*, the Board reversed the judge's conclusion that the employer violated Section 8(a)(5) by failing to provide the union with requested information pertaining to work orders. The employer there articulated a legitimate confidentiality concern with respect to customer information contained therein. The employer also fulfilled its obligation to offer to accommodate its confidentiality concerns and its bargaining obligations because it offered to allow the union access to review the information in person or by providing hard-copy versions with the sensitive information redacted, but the union never responded to those offers. This case is distinguishable because Respondent failed to articulate a confidentiality or proprietary interest and, even if it had, it failed to bargain over an accommodation or provide Local 4202 with an alternate opportunity to review the entire document.

In *Barnard College*, the Board affirmed the judge's finding that, to the extent the employer had not provided all of the requested information, its omission was the result of a good-faith misunderstanding about the scope of the request, which the union could have clarified but chose not to do so. Here, the scope of Local 4202's request was clear, and Respondent does not contend it did not know what information Local 4202 wanted or why.

Also, Local 4202 did not make its request and disengage, opting, instead, to quickly file the charge at issue. It made the oral requests on August 8, and then the four written requests later in September, which were all refused, before filing the September 30 charge. After filing the charge, Local 4202 met with Respondent in October, and it reiterated what information it needed and why.

Overall, Local 4202 established relevance and need. Respondent failed to prove a legitimate and substantial interest that outweighed Local 4202's need for the information, and, even if it had, it failed to bargain with Local 4202 over an accommodation. Respondent also failed to establish that it provided or offered to provide Local 4202 the requested information in an alternate form that was not so burdensome or time consuming as to impede Local 4202's reason for requesting it. For these reasons, I conclude Respondent violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSIONS OF LAW

1. Respondent, AT&T Mobility Services, LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Communications Workers of America ("CWA") and the Communications Workers of America, Local 4202, A/W Communications Workers of America, AFL-CIO ("Local 4202") are labor organizations within the meaning of Section 2(5) of the Act.

¹⁹ Recently, the Board suggested there are circumstances where the parties are more likely to obtain satisfactory and timely resolution of their disputes over information requests through more extensive good-faith discussions between themselves rather than involving the Board through unfair labor practice litigation. *McLaren Macomb*, 369 NLRB No. 73 fn. 1 (2020); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 367 NLRB No. 117, slip op. at 1 fn. 2 (2019). The Board, however, did not articulate any specifics or establish prerequisites to filing a charge. In *McLaren*, the union filed the charge after it made the information request and received no response from the employer for nearly a month and a half. After the charge was filed, the employer reached out to the union to ask to have discussions about whether they could settle the matter, and the union did not return the call until after the employer provided the requested information. In *Nexstar Broadcasting*, the union made a request for information and the employer partially responded approximately 5 months later. In both cases, the Board found the employer violated the Act. Here, as stated, Local 4202 explained why it wanted the Integrity Matrix, and Respondent refused to provide a copy, repeatedly stating it was a managerial document that did not prescribe certain levels of discipline for specific COBC violations. After two months of Respondent repeatedly refusing to provide the requested information, or offering to bargain an accommodation, Local 4202 filed the charge.

3. The CWA has been the recognized exclusive collective-bargaining representative of:

The employees described in Article 2, Section 1 of the collective-bargaining agreement between the Communication Workers of America and Respondent which is effective from February 12, 2017 to February 12, 2021.

4. Respondent violated Section 8(a)(5) and (1) of the Act from September 18, 2019 forward when it failed and refused to provide Local 4202 with a copy of the requested Integrity Matrix.

5. The above violations are unfair labor practices that affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER²⁰

Respondent, AT&T Mobility Services, LLC, at its Rantoul, Illinois facility, through its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Communications Workers of America, Local 4202, A/W Communications Workers of America, AFL-CIO ("Local 4202") by failing and refusing to furnish it with information that is relevant and necessary to Local 4202's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish Local 4202 with a copy of the Integrity Matrix.

(b) Post at its Rantoul, Illinois facility copies of the attached notice marked "Appendix."²¹ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic

²⁰ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²¹ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 18, 2019.

- (c) Within 21 days after service by the Region, file with the Regional Director for Region 25 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., August 25, 2020.



Andrew S. Gollin
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail or refuse to bargain collectively with the Communications Workers of America, Local 4202, A/W Communications Workers of America, AFL-CIO ("Local 4202") by failing and refusing to furnish it with requested information that is relevant and necessary to the performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish Local 4202 with a copy of the Integrity Matrix requested it on September 18, 29, 20, and 26, 2019

AT&T MOBILITY SERVICES, LLC
(Employer)

DATED: _____ BY _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

The Administrative Law Judge's decision can be found at www.nlr.gov/case/25-CA-249079 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS
PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE
OFFICER, (317) 991-7644.